



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,407	11/05/2003	Richard L. Ormberg	26775-501	8333

7590

12/10/2004

Matthew J. Golden, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C
The Chrysler Center
666 Third Avenue, 24th Floor
New York, NY 10017

EXAMINER

ISABELLA, DAVID J

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/702,407

Applicant(s)

ORNBERG ET AL.

Examiner

DAVID J ISABELLA

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 7-10 and 15-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/1/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

Applicant's election without traverse of Group 1 and species of claim 13 in the reply filed on 9/8/2004 is acknowledged. Claims 1-6,11,12,13 and 14 are pending for immediate action.

Claims 7-10 and 15-23 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/8/2004.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6,11,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragheb, et al (6774278) in view of Malfroy-Camine et al (5696159) and Shastri, et al (5837752).

Ragheb, et al discloses a coated implantable medical device wherein Ragheb outlines a wide range of bioactive materials that may be employed including free radical. Ragheb, et al is silent to the particular species of the genus of free radical scavengers

Art Unit: 3738

and antioxidants. Shastri, et al discloses various biopolymers, including hyaluronic acid, fibrin, collagen and saccharides, and ceramics, including hydroxyapatite, that may be used in the manufacture of medical devices. Shastri, et al discloses various biopolymers, including hyaluronic acid, fibrin, collagen and saccharides, and ceramics, including hydroxyapatite, that may be used in the manufacture of medical devices.

Malfroy-Camine et al discloses a synthetic catalytic free radical scavenger useful as antioxidants for prevention and therapy of disease. The catalyst is a non proteinaceous material having manganese and iron chelates compounds. In view of Malfroy-Camine et al (5696159) and Shastri, et al. To provide the specific free radical scavenger catalysts of Malfroy-Camine et al with a biomaterial substrate or carrier of Ragheb, et al to effectively reduce the available free radicals at the tissue site of the medical device would have been obvious to one with ordinary skill in the art base on selection of a known species of the broad genus of bioactive materials. Ragheb, et al discloses general base materials that are used in the fabrication of the medical device. To use hyaluronic acid as a base material for the medical device would have been obvious to one with ordinary skill in the art based on substitution of equivalent elements.


Allowable Subject Matter

Claims 13 and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J ISABELLA whose telephone number is 703-308-3060. The examiner can normally be reached on MONDAY-THURSDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID J ISABELLA
Primary Examiner
Art Unit 3738

DJI
December 1, 2004